

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

DAVID TIMOTHY MOORE,

Plaintiff,

VS.

GEORGIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

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NO. 5:19-CV-473-MTT-MSH

ORDER AND RECOMMENDATION

Plaintiff, an inmate currently incarcerated at Dooly State Prison in Unadilla, Georgia, has filed a *pro se* complaint (ECF No. 1) seeking relief pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.* At this stage, only Plaintiff's religious freedom claims remain. Order & R. 3-6, Apr. 21, 2020, ECF No. 10; Order 1, June 8, 2020, ECF No. 13 (adopting recommendation). Pending before the Court is Plaintiff's second motion for a temporary restraining order (ECF No. 24). For the hereinbelow reasons, the Court recommends that Plaintiff's motion be denied. Also pending are Plaintiff's motion for extension of time to complete discovery (ECF No. 25), his motion to compel (ECF No. 27), and Defendants' motion for extension of time to file dispositive motions (ECF No. 34). The Court reopens discovery for a period of forty-five days, Plaintiff's motion for extension of time is granted in part, his motion to compel is denied as moot, and Defendants' motion for extension of time is denied as moot.

I. Plaintiff's Motion for Temporary Restraining Order

Plaintiff previously attached his first motion for temporary restraining order (“TRO”) to his complaint. *See* Compl. 32-33, ECF No. 1. Therein, he sought a TRO “enjoining the Defendants to comply with the dietary laws and restrictions of his religious faith during the entire month of December 2019.” *Id.* The Court denied Plaintiff’s motion by finding, *inter alia*, that “[t]he facts in this case have not yet been sufficiently developed to conclude that there is a substantial likelihood that Plaintiff will ultimately prevail on the merits of his claims or that Plaintiff will suffer immediate or irreparable injury.” Order & R. 7, Apr. 21, 2020, ECF No. 10; *see also* Order 1, June 8, 2020, ECF No. 13 (adopting recommendation).

The Court received Plaintiff’s second motion for TRO (ECF No. 24) on October 29, 2020. He characterizes his motion as a “renewed” motion with a scope similar to his first motion for TRO. 2d Mot. for TRO 1-3, ECF No. 24. Specifically, Plaintiff requests that the Court order Defendants to consult with Plaintiff and “outside [Nation of Islam (“NOI”)] officials” to provide him and all other NOI inmates “a diet that conforms to the dietary laws and restrictions of the NOI” during “the NOI’s fast for the month of December 2020.” *Id.* at 13. A TRO or preliminary injunction is a drastic remedy used primarily to preserve the status quo rather than grant most or all of the substantive relief sought in the complaint. *See, e.g., Cate v. Oldham*, 707 F.2d 1176, 1185 (11th Cir. 1983); *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982).¹ Factors a movant must show to be entitled to

¹ The standard for obtaining a TRO is the same as the standard for obtaining a preliminary injunction. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir.

a TRO include: “(1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest.” *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam).

Plaintiff’s motion should be denied. First, Plaintiff’s motion is moot. Like his first motion for TRO, his pending motion seeks an order compelling Defendants to serve him different meals solely during NOI fast for the month of December. *Compare* Compl. 32, *with* 2d Mot. for TRO 13. December 2020—and presumably the NOI fast period—has now passed, and Plaintiff does not appear to seek relief for any other period of time. Thus, to the extent Plaintiff seeks a TRO for the December 2020 NOI fast, his motion is now moot.

Second, to the extent Plaintiff seeks a TRO requiring Defendants to provide him NOI-compliant meals in the future, his motion should be denied at this time. In support of his motion, Plaintiff primarily argues that Defendants have shown “obstinacy” and “recalcitrant[ce]” in their responses to his discovery requests, and he is dissatisfied with those responses. *See id.* at 4-12. He also notes that he disagrees that current prison dietary options conform with NOI dictates, Defendants failed to raise any counterclaims in their answer, he filed prison grievances concerning his claims, and Defendants have not shown a compelling government interest justifying serving him food which deviates from NOI dictates. *Id.* at 7-12. Liberally construing Plaintiff’s arguments, he appears to address the

2001) (per curiam); *Windsor v. United States*, 379 F. App’x 912, 916-17 (11th Cir. 2010) (per curiam).

first two factors of the TRO standard—namely, that he is likely to succeed on the merits of his claims and that the TRO is necessary to prevent irreparable injury. *See Ingram*, 50 F.3d at 900.

Defendants filed a response (ECF No. 28) to Plaintiff's motion, arguing that Plaintiff is not entitled to a TRO. Resp. to Mot. for TRO 2-4, ECF No. 28. They note that the parties have engaged in extensive discovery concerning Plaintiff's claims and that neither Plaintiff's dissatisfaction with Defendants' discovery responses nor his disagreement with their claims in their answer are bases for a TRO. *Id.* at 3-4. The Court agrees. Even assuming Plaintiff has shown that he will suffer an injury, he has not satisfied the remaining factors for a TRO. His request for an order for Defendants to provide him unique meals would directly contradict the long-standing principle that prison administrators should be given "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979).

Moreover, to the extent Plaintiff requests an order for Defendants to provide him unique meals, he seeks the same relief in his complaint, and "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (internal quotations and citations omitted). Although Plaintiff certainly disagrees with Defendants' characterization of their defenses in their answer, as the Court previously recognized in denying Plaintiff's first motion for TRO, "the facts in this case have not yet been sufficiently developed to conclude that there is a

substantial likelihood that Plaintiff will ultimately prevail on the merits of his claims.” Plaintiff’s disagreements with discovery responses and Defendants’ asserted defenses are insufficient to change this conclusion. The Court **RECOMMENDS** that Plaintiff’s second motion for TRO be **DENIED**.

II. Plaintiff’s Motion to Compel and Motions for Extension of Time

The Court received Plaintiff’s motion to compel (ECF No. 27) on November 5, 2020. He requests that the Court order Defendants to adequately respond to his requests for production and interrogatories. Mot. to Compel 1-5, ECF No. 27. Plaintiff’s motion primarily concerns his requests for copies of (1) the Georgia Department of Corrections (“GDC”) master menu for all meals provided to him between 2005 and the present, (2) the GDC menu for inmates participating in NOI fasts, and (3) recipes and details for food items included in GDC’s menu options. *Id.* at 2-4.

Defendants responded (ECF No. 30) to Plaintiff’s motion to compel on November 19, 2020. They state that they responded to Plaintiff’s requests by providing him copies of GDC policies concerning its standard menu for inmates, alternative menu program, and meals for inmates participating in NOI fasts. Resp. to Mot. to Compel. 3-4, ECF No. 30. Defendants object to additional disclosures of specific GDC menus as unduly burdensome. *Id.* at 4-5. However, they also state that they intend to continue supplementing their responses to Plaintiff’s discovery requests. *Id.* at 3-4. The Court received Plaintiff’s discovery status report (ECF No. 31) on December 30, 2020. He states that Defendants’ have, indeed, supplemented their discovery responses, but he remains dissatisfied with their responses because they have failed to provide him detailed information about GDC’s

particular menu options and recipes. Pl.'s Discovery Status Report 1-2, ECF No. 31. He emphasizes that because discovery had closed by that time, he is unable to supplement his requests to seek additional information. *Id.* at 3-4. Defendants have not responded to Plaintiff's discovery status report.

At this stage, it is unclear what documents Defendants have provided to Plaintiff. Both parties agree that Defendants have sent additional documents and responses to Plaintiff since he initially filed his motion to compel, but neither party has submitted a comprehensive list or description of those documents. Based on his discovery status report, however, Plaintiff remains dissatisfied and believes Defendants have failed to adequately respond to his discovery requests. *See* Pl.'s Discovery Status Report 1-2. Moreover, because it is unclear how Defendants have supplemented their responses, the Court cannot determine whether they have fulfilled their obligations to respond to Plaintiff's discovery requests.

As Plaintiff correctly notes, discovery has now closed. Both parties, however, seek extensions of deadlines. The Court received Plaintiff's motion for extension of time to complete discovery (ECF No. 25) on October 29, 2020. He complains that Defendants have not adequately responded to his discovery requests, states that he intends to file a motion to compel, and requests that the Court extend the discovery deadline ninety days. Pl.'s Mot. for Extension of Time 1-4, ECF No. 25. Defendants filed their motion for extension of time to file dispositive motions (ECF No. 34) on January 11, 2021. They claim that they intend to transition this case to a new attorney who will need additional time to evaluate the case and finalize a dispositive motion. Defs.' Mot. for Extension of

Time 2, ECF No. 34. The Court granted Defendants' previous motion for extension of this same deadline only two weeks ago. *See* Text-only Order, Dec. 31, 2020, ECF No. 33. Defendants, however, now believe that the extension they initially sought is insufficient and request an additional extension of the dispositive motion deadline to March 8, 2021. Defs.' Mot. for Extension of Time 2-3.

The parties' outstanding and unclear discovery disputes warrant reopening of the discovery period in order to ensure Plaintiff has an adequate opportunity to develop the record. Moreover, in order to rule on Plaintiff's motion to compel, the Court needs additional information concerning Defendants' responses to Plaintiff's discovery requests. Plaintiff also indicates he intends to supplement and particularize his discovery requests. For these reasons, the Court **ORDERS** that the discovery period be reopened for a period of **FORTY-FIVE (45) DAYS** to allow the parties to narrow their points of disagreement about Plaintiff's discovery requests and resolve any disputes thereabout. The parties must file any dispositive motions within **THIRTY (30) DAYS** from the close of the reopened discovery period. Thus, Plaintiff's motion for extension of time is **GRANTED IN PART**, and Defendants' motion for extension of time is **DENIED AS MOOT**.

Additionally, as explained above, at this time, Plaintiff admits that Defendants have provided him new documents since he initially filed his motion to compel, but he has not particularized his motion to account for Defendants' supplemental responses. Therefore, Plaintiff's pending motion to compel is **DENIED AS MOOT**. However, Plaintiff may send Defendants supplemental discovery requests during the reopened discovery period and file a new motion to compel if their responses are legally insufficient. If he chooses to

file a new motion and Defendants choose to respond thereto, the parties must specify (1) what discovery requests Plaintiff sent to Defendants, (2) what documents Defendants sent to Plaintiff in response, whether in an initial response or a supplemental response, and (3) what additional documents or information Plaintiff seeks. If necessary, the Court will determine whether Defendants have complied with Plaintiff's discovery requests at that time.

SO ORDERED AND RECOMMENDED this 13th day of January, 2021.

/s/ STEPHEN HYLES
UNITED STATES MAGISTRATE JUDGE